



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 8415-97  
19 July 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. The Board reviewed the request for corrective action addressed in the enclosed advisory opinion, and those listed in an enclosure to your letter of 25 July 1999 under the heading "Summary of missing or destroyed material ...to the Congress".

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Bureau of Naval Personnel dated 2 July 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

With regard to your request for correction of your record to show that you served on active duty for a period of thirty years, rather than fourteen, and attained the "highest enlisted rank", rather than grade E-6, the Board substantially concurred with the comments contained in the advisory opinion. It noted that you were not eligible for transfer to the Fleet Reserve under the Temporary Early Retirement Authority (TERA) when you were discharged by reason of physical disability, because you had not completed fifteen years of active duty, which is the minimum period required to qualify for TERA consideration. In addition, it noted that retirement under TERA was used as a management tool, and was not an entitlement.

The Board noted that a service member is prohibited by law from receiving payment for more than 60 days of accrued leave during a military career. Although it is unfortunate that you had a positive leave balance on your discharge date, there is no corrective action the Board can take which would entitle you to exceed the 60 day limitation. In addition, it concluded that the available evidence was insufficient to demonstrate that you were improperly denied the right to take leave during your final year of service. It noted that a service member is often restricted from taking leave during the pendency of disability evaluation proceedings. This may have occurred in your case, and possibly been compounded by the extraordinary amount of time it took to complete your disability evaluation. The Board noted that you were retained on active duty for a short period after your disability evaluation was finalized, and that the extension was, presumably, with your consent. The Board could not discern any error or injustice in connection with the extension of your service. It noted that you received credit for the service on the DD Form 214 you were issued on or about 12 September 1997, and there is no indication that you did not receive appropriate pay and allowances for that period.

The Board noted that the only adverse information filed in your official military personnel file (OMPF) is contained in the Evaluation Report and Counseling Record covering the 1 December 1995-15 November 1996 period. The report is technically adverse because it indicates that you did not meet body weight standards. The Board noted that the information concerning your weight is factually correct, that you had the opportunity to comment on it, and your comments in that regard, as well as on other perceived deficiencies in the report, were filed in your OMPF adjacent to the evaluation report. The remainder of the report is laudatory in nature, and does appear to represent the unbiased judgment of rating officials. Your belief that your performance was better than indicated in the report, and that the comments should have been more laudatory, do not provide a basis for removing the report from your record or directing any amendments thereto.

The Board was unable to address your request for correction of unspecified "erroneous and discriminatory material", because it lacked sufficient information to do so. It did not address your request for reimbursement for "unspecified funds owed", because it does not have the authority to direct payment of funds except where the correction of a record creates an entitlement payment. You have not specified the record you want corrected or the nature of the desired corrective action.

The Board was not persuaded that you were the victim of improper discrimination or prejudice, or that any actions were taken against you in retaliation for your making any of the numerous protected communications you made during the 30 May 1996-12 September 1997 period. In this regard, the Board substantially concurred with the conclusions of the Military Whistleblower Reprisal Investigation in your case, dated 7 January 1997, conducted at the direction of the Commander Military Sealift Command, as concurred in by the Department of Defense Inspector General.

With regard to your disability evaluation and ultimate discharge with entitlement to disability

severance pay, the Board noted that the evaluation was initiated at your request, and that you were accorded a fair, impartial and comprehensive review by the Naval Disability Evaluation System. The Board concluded that your thyroid condition was correctly rated as 10% disabling, and that you did not suffer from any other unfitting conditions. The Board noted that the Department of Veterans Affairs conducted an independent review of your health records, and assigned a 10% rating to your unfitting condition.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1830  
Pers823  
Ser 548  
2 Jul 1999

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: COMMENTS AND RECOMMENDATIONS [REDACTED]

Ref: (a) Pers-00XCB ltr of 04 Jun 1999

Encl: (1) BCNR File with Microfiche Service Record

1. Reference (a) requested comments and recommendations in subject member's case. Specifically, Petitioner requests to advancement to the highest enlisted grade possible with corresponding transfer to the retired list with 30 years active service credited.
2. Review of the Enlisted Master File for [REDACTED] indicates that he was separated from the United States Navy after 14 years, 10 months, and 14 days of active military service due to a physical disability. Specifics of his physical condition that necessitated his separation are not available at the BUPERS.
3. [REDACTED] request for relief of his injustice and being credited with service and pay he is not entitled to can not be authorized based on the present directives and regulations in place at BUPERS and as dictated by higher authority.
3. In view of above, it has been determined that no error or injustice has occurred in this case. Enclosure (1) is returned.

W. M. FARMER, JR.

Head, Enlisted Retirements Branch



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 6934-99

20 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Chief of Naval Operations, a copy of which is enclosed. The Board also considered your rebuttal to the advisory opinion dated 11 July 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

Ser N09B33/OU517153  
6 June 2000

From: Chief of Naval Operations (N09B33)  
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF  
[REDACTED]

Encl: (1) BCNR File with attachments

1. Enclosure (1) was forwarded for eligibility determination [REDACTED] for the Purple Heart and the Philippine Liberation Medal while serving with the U.S. Navy during World War II.
2. Before the Purple Heart can be approved, there must be adequate documentation that a World War II veteran was wounded as a direct result of enemy action and that such injury required medical treatment. The explosion aboard the USS MOUNT HOOD happened during the morning hours of 10 November 1944 while moored at Seeadler Harbor. [REDACTED] indicates he was injured by shrapnel from the explosion. This explosion and [REDACTED]'s injury was not the direct result of enemy action but a horrific accident. Therefore, [REDACTED] injury does not meet the conditions under which the Purple Heart may be awarded.
3. The USS BEAVERHEAD (AK-161) is not listed as being qualified for the Philippine Liberation Medal. In addition, Navy Base, Navy 3205 and COMSERFOR 7<sup>th</sup> Fleet did not qualify for the medal. In view of the above, [REDACTED] would not be entitled to the Philippine Liberation Medal.

*B. A. Wilson*  
B. A. WILSON  
By direction